

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
: Case No. 05-44481 (RDD)
DELPHI CORPORATION, et al. :
Debtors. : (Jointly Administered)
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AFFIDAVIT OF SERVICE

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants, LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On November 20, 2006, I caused to be served the document listed below (i) upon the parties listed on Exhibit A hereto via overnight delivery:

Debtors' Reply to Objection of Orix Warren, LLC to Motion for Order Under 11 U.S.C. Section 365(d)(4) Extending Deadline to Assume or Reject Unexpired Lease of Nonresidential Real Property (Docket No. 5590) [a copy of which is attached hereto as Exhibit B]

Dated: November 21, 2006

/s/ Evan Gershbein
Evan Gershbein

Subscribed and sworn to (or affirmed) before me on this 21st day of November, 2006, by Evan Gershbein, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: /s/ Amy Lee Huh

Commission Expires: 3/15/09

EXHIBIT A

COMPANY	CONTACT	ADDRESS1	ADDRESS2	ADDRESS3	CITY	STATE	ZIP	PARTY / FUNCTION
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ORIX Real Estate Equities, Inc.	Jim Purinton	100 N. Riverside Plaza	Suite 1400		Chicago	IL	60606	

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JPMorgan Chase Bank, N.A.	Thomas F. Maher, Richard Duker, Gianni Russello	270 Park Avenue		New York	NY 10017	Postpetition Administrative Agent
JPMorgan Chase Bank, N.A.	Vilma Francis	270 Park Avenue		New York	NY 10017	Prepetition Administrative Agent
Latham & Watkins LLP	Robert J. Rosenberg	885 Third Avenue		New York	NY 10022	Counsel to Official Committee of Unsecured Creditors
Simpson Thatcher & Bartlett LLP	Kenneth S. Ziman, Robert H. Trust, William T. Russell, Jr.	425 Lexington Avenue		New York	NY 10017	Counsel to Debtor's Prepetition Administrative Agent, JPMorgan Chase Bank, N.A.
Skadden, Arps, Slate, Meagher & Flom LLP	John Wm. Butler, John K. Lyons, Ron E. Meisler	333 W. Wacker Dr.	Suite 2100	Chicago	IL 60606	Counsel to the Debtor
Skadden, Arps, Slate, Meagher & Flom LLP	Kayalyn A. Marafioti, Thomas J. Matz	4 Times Square	P.O. Box 300	New York	NY 10036	Counsel to the Debtor
United States Trustee	Alicia M. Leonhard	33 Whitehall Street	21st Floor	New York	NY 10004-2112	Counsel to United States Trustee

EXHIBIT B

Hearing Date: November 30, 2006
Hearing Time: 10:00 a.m. (Prevailing Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
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DELPHI CORPORATION, et al., : Case No. 05-44481 (RDD)
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Debtors. : (Jointly Administered)
:
----- X

DEBTORS' REPLY TO OBJECTION OF ORIX WARREN, LLC TO MOTION FOR ORDER
UNDER 11 U.S.C. § 365(d)(4) EXTENDING DEADLINE TO ASSUME OR REJECT
UNEXPIRED LEASE OF NONRESIDENTIAL REAL PROPERTY

("DEBTORS' REPLY TO ORIX WARREN OBJECTION")

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"),¹ hereby submit this reply (the "Reply") to the Objection Of Orix Warren, LLC To Motion For Order Under 11 U.S.C. § 365(d)(4) Extending Deadline To Assume Or Reject Unexpired Lease Of Nonresidential Real Property (Docket No. 1123) (the "Objection"), which has been set for hearing on November 30, 2006 at 10:00 a.m. (Prevailing Eastern Time) pursuant to the Notice of Objection Of Orix Warren, LLC To Motion For Order Under 11 U.S.C. § 365(d)(4) Extending Deadline To Assume Or Reject Unexpired Lease Of Nonresidential Real Property (Docket No. 5178) (the "Notice of Objection") and respectfully represent as follows:

Preliminary Statement

1. The Objection should be overruled because cause exists for extending the deadline to assume or reject all nonresidential real property leases to June 7, 2007, as more fully set forth in the Debtors' Motion For Order Under 11 U.S.C. § 365(d)(4) Extending Deadline To Assume Or Reject Unexpired Lease Of Nonresidential Real Property (Docket No. 995) (the "365(d)(4) Motion"). Of the nearly 90 lessors affected, Orix Warren, LLC ("Orix Warren") was the only one to file an objection to the 365(d)(4) Motion.² Orix Warren's Objection was subsequently resolved, although temporarily, as memorialized in the Order Pursuant to 11 U.S.C. § 365(d)(4) Extending Deadline To Assume Or Reject Unexpired Lease Of Nonresidential Real Property entered by the Court on November 29, 2005 (Docket No. 1345), a copy of which is

¹ Delphi Automotive Systems LLC is the tenant and the obligor under the lease subject to this Reply. The term "Debtors" is used pervasively herein because the Reply represents the position of the Debtors. Obligations and liabilities inherent in such references, however, are attributable only to Delphi Automotive Systems LLC.

² Months after the 365(d)(4) Motion was approved, Cherokee North Kansas City, LLC ("Cherokee"), a lessor at the Debtors' North Kansas City, Missouri manufacturing facility, sought to shorten the Debtors' 365(d)(4) assumption/rejection deadline (Docket No. 1834). The Debtors prevailed and on April 11, 2006, this Court entered an order denying Cherokee's motion (Docket No. 3199).

attached hereto as Exhibit A. Specifically, Orix Warren agreed to the eighteen-month extension applicable to all non-residential real property leases subject to its right, on or prior to October 1, 2006, to file a notice of objection if it was opposed to the final six months of the extension. In the event of such an objection, the burden would shift back to the Debtors to show cause (as the term "cause" is contemplated under section 365(d)(4) of the Bankruptcy Code) for the last six months of the extension.³ On September 21, 2006, Orix Warren filed the Notice of Objection, setting a hearing on November 30, 2006 on its Objection.

2. Cause for such an extension exists. Indeed, as set forth more fully below, the Debtors satisfy the factors that the United States Court of Appeals for the Second Circuit has held should be weighed in determining whether cause exists to extend a debtor's deadline to assume or reject an unexpired lease. See South Street Seaport L.P. v. Burger Boys, Inc., 94 F.3d 755, 761 (2d Cir. 1996). First, Delphi Automotive Systems LLC ("DAS LLC"), an Affiliate Debtor that is the tenant under the subject lease (the "Orix Lease"), is current on its postpetition lease payments. Second, the Debtors' continued occupation of the property will not damage Orix Warren beyond the compensation available under the Bankruptcy Code. Third, although the Orix Lease is not DAS LLC's primary asset, it is a part of the Debtors' real estate portfolio, and the evaluation of that portfolio in its entirety to determine which real estate leases will remain part of the Debtors' core operations, and which will not, is one of the essential components of the Debtors' reorganization efforts that the Debtors must complete to fully implement their transformation plan. Fourth, because of the size of the Debtors' chapter 11 cases and the complexity of the issues involved in this restructuring, the Debtors have not had sufficient time

³ The Debtors reserve all rights to seek a further extension of the current deadline.

to make critical decisions regarding all of their leases, including the Orix Lease. For the foregoing reasons and as set forth in more detail below, the Objection should be overruled.

Argument

A. "Cause" Exists To Justify Extending The 365(d)(4) Deadline

3. The term "cause" as used in 11 U.S.C. § 365(d)(4) is not defined in the Bankruptcy Code. To meet its burden to show cause, however, the Debtors must satisfy the factors enumerated by the Second Circuit in South Street Seaport L.P. v. Burger Boys, Inc., 94 F.3d 755 (2d Cir. 1996). Those factors are:

- (a) whether the debtor was paying for the use of the property;
- (b) whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
- (c) whether the lease is the debtor's primary asset; and
- (d) whether the debtor has had sufficient time to formulate a plan of reorganization.

Id. at 761. Additional factors that may merit consideration include the complexity of the case and the number of leases that the debtor must evaluate. Id. See also 130 Cong. Rec. 58,894-95 (1984), reprinted in 1984 U.S.C.C.A.N. 590, 597 ("cause" includes large number of leases) (statement of Sen. Hatch); In re Unit Portions of Del., Inc., 53 B.R. 83, 85 (Bankr. E.D.N.Y. 1985).

4. A brief review of the factors set forth by the Burger Boys court indicates that cause exists to extend the Debtors' deadline under section 365(d)(4) of the Bankruptcy Code to assume or reject the Orix Lease.

(i) DAS LLC Is Continuing To Pay For The Use Of The Property

5. DAS LLC is current in all of its postpetition obligations under the Orix Lease.⁴ Moreover, DAS LLC has significant resources and liquidity, including access to the Debtors' substantial debtor-in-possession credit facility, which provide adequate assurance to Orix Warren that it will continue to receive its postpetition rent timely. See Declaration Of John D. Sheehan In Support Of The Debtors' Reply To Objection Of Orix Warren, LLC To Motion For Order Under 11 U.S.C. § 365(d)(4) Extending Deadline To Assume Or Reject Unexpired Lease Of Nonresidential Real Property (the "Sheehan Declaration") at ¶ 4.

(ii) Orix Warren Will Not Suffer Any Harm Beyond Compensation Available Under The Bankruptcy Code Because Of The Debtors' Continued Occupation

6. There is no harm beyond compensation available under the Bankruptcy Code that will befall Orix Warren if the Debtors' assumption/rejection deadline under section 365(d)(4) of the Bankruptcy Code is maintained to June 7, 2007. By staying in the premises of the Orix Lease and timely paying its postpetition rent, DAS LLC is not increasing the damages to Orix Warren that would not be compensable under the Bankruptcy Code.

(iii) The Orix Lease Is Important to the Debtors' Estates

7. The Orix Lease is currently being used as a research facility for one of the Debtors' core divisions. Although the Debtors acknowledge that the Orix Lease is not the primary asset of the Debtors' businesses, this facility is nonetheless important to the Debtors' estates. As this Court recognized when ruling on the Cherokee dispute this past Spring, ". . . [the Kansas City facility] is a piece in the very complicated puzzle that the debtor is still putting

⁴ As noted by this Court in its ruling at the April 7, 2006 omnibus hearing denying Cherokee's motion to shorten the Debtors' deadline to assume or reject an unexpired lease: "[H]ere, of course, the debtor is paying and that's a strong factor for continuing the debtor's ability to decide whether to assume or reject to a later date." Transcript of April 7, 2006 Omnibus Hearing at 82:5-9. The quoted excerpt of the transcript is attached hereto as Exhibit B.

together, with the help of its various constituencies including the creditors' committee"

Transcript of April 7, 2006 Omnibus Hearing at 85:11-17.

8. Indeed, the Debtors' research and technical centers, manufacturing sites, and sales offices are all vital to the Debtors' business operations. As part of the Debtors' restructuring efforts, the Debtors are in the process of evaluating all owned and leased real estate, including the Orix Lease. In considering their options with respect to the real property leases, the Debtors are evaluating a variety of factors to determine whether it is appropriate to assume, assume and assign, or reject each particular real property lease. See Sheehan Declaration at ¶ 5.

9. The Debtors have announced their transformation plan, which outlines the realignment of their global product portfolio and manufacturing footprint to preserve the Debtors' core businesses. Implementation of that transformation plan, however, will take time as the Debtors continue to evaluate the allocation of their resources, which include their real estate holdings. Moreover, the completion of the Debtors' negotiations with their major stakeholders is integral to their decision-making. Indeed, the results of the Debtors' framework discussions and their ongoing business planning are likely to have an impact on their analysis. Forcing a premature decision to assume or reject the Orix Lease would harm the Debtors, their estates, and all other stakeholders because it could force DAS LLC to assume excess administrative liabilities under the Orix Lease or forfeit value on account of a marketable or otherwise necessary lease.

See Sheehan Declaration at ¶ 6.

(iv) The Debtors Have Not Had Sufficient Time To Formulate A Plan Of Reorganization

10. In the Objection, Orix Warren notes that the Debtors have no more than 90 leases to evaluate in these cases and that "[t]his relatively small number of leases weighs against the grant of an 18 month extension." Objection at ¶ 8. This argument is hollow because it

completely ignores the complexity of this multi-billion dollar restructuring. The Second Circuit has held that prior to making critical assumption or rejection decisions, a debtor must be permitted "the leeway needed to appraise its financial situation and the potential value of its assets in terms of the formulation of a plan." Theatre Holding Corp. v. Mauro, 681 F.2d at 102, 104 (2d Cir. 1982); see also In re Teligent, Inc., 268 B.R. 723, 739 (Bankr. S.D.N.Y. 2001).

11. At this point in the Debtors' chapter 11 cases, the Debtors' energies are focused on negotiating with key constituencies to formulate a plan of reorganization which will allow for the continued implementation of the Debtors' transformation plan. These discussions are likely to influence the Debtors' decisions regarding the assumption or rejection of their leases. The Debtors need to focus on implementing the transformation plan, not making one-off decisions about leases or facilities. See Sheehan Declaration at ¶ 7.

12. Many courts facing similar issues have declined to force a debtor to prematurely assume or reject a lease or executory contract because the "interests of the creditors collectively and the bankrupt estate as a whole will not yield easily to the convenience or advantage of one creditor." See Public Svc. Co. of New Hampshire v. New Hampshire Elec. Coop., Inc. (In re Public Svc. Co. of New Hampshire), 884 F.2d 11, 14-15 (1st Cir. 1989); see also In re Midtown Skating Corp., 3 B.R. 194, 198 (Bankr. S.D.N.Y. 1980) (denying motion to compel assumption of lease and stating that "debtor should not be expected to jump too soon into this complex matter"); see also Hiser v. Blue Cross of Greater Philadelphia (In re St. Mary Hosp.), 89 B.R. 503, 513-14 (Bankr. E.D.Pa. 1988) ("the interests of the Debtor here in denying a precipitous assumption or rejection appear to us much greater than the interests of HHS in forcing a prompt resolution"). Forcing DAS LLC to assume or reject the Orix Lease prematurely would simply benefit Orix Warren to the potential detriment of all other creditors.

13. As the Second Circuit has cautioned, premature assumption of a lease should be avoided, if possible, because if the lease is subsequently breached when a debtor changes its business plan or its forecasted revenues, the lessor would have an administrative claim rather than a general unsecured claim that would be subject to the cap on lease rejection damages under section 502(b)(6) of the Bankruptcy Code. See In re Klein Sleep Products, Inc., 78 F.2d 18, 29 (2d Cir. 1996). Such caution is warranted here. The Orix Lease, by its terms, expires December 31, 2008 and requires DAS LLC to pay approximately \$158,000 in monthly obligations. See Sheehan Declaration at ¶ 8. Forcing DAS LLC to assume or reject the Orix Lease when the Debtors have not yet determined their plans with respect to that lease could trigger additional administrative claims that would otherwise be a general unsecured claim limited by section 502(b)(6) of the Bankruptcy Code in the event of a rejection of that lease. Accordingly, DAS LLC cannot, and should not, be required to make preemptory lease assumption and rejection decisions at this time.

(v) The Complexity And Size Of The Debtors' Chapter 11 Filings Warrant A Considerable Period In Which To Evaluate The Consequences Associated With Assumption Or Rejection Of All Leases

14. The complexity and size of these cases also warrant denial of the Objection at this time. The complexity of the issues that the Debtors face in implementing their transformation plan and negotiating with their major stakeholders is magnified by the size of these cases, currently among the largest pending before any bankruptcy court in the United States. In summary:

- (a) Delphi and 41 affiliated entities sought chapter 11 relief.
- (b) As of the commencement of these chapter 11 cases, the Debtors were the largest manufacturing and technology company ever to seek chapter 11 relief and employed approximately 180,000 employees worldwide. The Debtors' 50,600 U.S. employees work in approximately 44 manufacturing sites, 13 technical centers, and

Delphi's Troy, Michigan worldwide headquarters. The company's foreign entities employed more than 134,000 people supporting 120 manufacturing sites and 20 technical centers in nearly 40 countries around the globe.

- (c) The Debtors' global 2005 revenues were approximately \$26.9 billion, and global assets as of December 31, 2005 were approximately \$17 billion.
- (d) The Debtors supply products to nearly every major global automotive original equipment manufacturer, with 2005 sales to the Debtors' former parent, General Motors Corporation, equaling approximately \$12.9 billion and sales to each of Ford Motor Company, DaimlerChrysler Corporation, Renault/Nissan Motor Company, Ltd., and Volkswagen Group exceeding \$850 million.
- (e) Approximately 16,000 proofs of claim have been timely filed against the Debtors in these cases and there are more than 5,100 scheduled liabilities for which no proof of claim was filed. Collectively, these proofs of claim and scheduled liabilities assert liquidated claims of more than \$37 billion against the Debtors. In addition, more than 6,000 proofs of claim assert additional unliquidated claims against the Debtors.

15. Courts have recognized that complex cases require a more careful and extended consideration by the debtor of whether to assume or reject leases. See In re Burger Boys, Inc., 94 F.3d at 761.

Conclusion

16. The Debtors have shown that cause exists for a extending the deadline to assume or reject the Orix Lease to June 7, 2007. The Objection should therefore be overruled and the Debtors' deadline to decide whether to assume or reject the Orix Lease should be consistent with the current deadline for the Debtors' other unexpired leases of nonresidential real property.

Notice

17. Notice of this Reply has been provided in accordance with the Amended Eighth Supplemental Order under 11 U.S.C. §§ 102(1) and 105 and Fed. R. Bankr. P. 2002(m),

9006, 9007, and 9014 Establishing (i) Omnibus Hearing Dates, (ii) Certain Notice, Case Management, and Administrative Procedures, and (iii) Scheduling an Initial Case Conference in Accordance with Local Bankr. R. 1007-2(e), which was entered by this Court on October 26, 2006 (Docket No. 5418). In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

Memorandum Of Law

18. Because the legal points and authorities upon which this Reply relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) be deemed satisfied.

WHEREFORE, the Debtors respectfully request that the court enter an order (a) overruling the Objection and extending the Debtors' deadline to decide whether to assume or reject the Orix Lease to a date consistent with the current deadline for the Debtors' other unexpired leases of nonresidential real property and (b) granting the Debtors such other and further relief as is just.

Dated: New York, New York
November 20, 2006

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

By: /s/ John Wm. Butler, Jr.

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Attorneys for Delphi Corporation, et al.,
Debtors and Debtors-in-Possession

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
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DELPHI CORPORATION, et al. : Case No. 05-44481 (RDD)
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Debtors. : (Jointly Administered)
:
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**ORDER PURSUANT TO 11 U.S.C. § 365(d)(4) EXTENDING
DEADLINE TO ASSUME OR REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY**

("365(d)(4) DEADLINE EXTENSION ORDER")

Upon the motion, dated November 9, 2005 (the "Motion"), of Delphi Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order (the "Order") under 11 U.S.C. § 365(d)(4) extending the deadline for the Debtors to assume or reject unexpired leases of nonresidential real property; and upon the record of the hearing held on the Motion; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and this Court having found that the only objection filed against the Debtors' Motion was the Objection of ORIX Warren, LLC to Motion for Order Under 11 U.S.C. § 365(d)(4) Extending Deadline to Assume or Reject Leases of Nonresidential Real Property (Docket No. 1123) which objection was subsequently resolved pursuant to the terms of this Order; and this Court having further found that no other objections or responses have been timely or properly filed; and it appearing that proper and

adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.
2. The date by which the Debtors must assume or reject any and all unexpired leases of nonresidential real property (the "Real Property Leases"), except for the Real Property Lease set forth in paragraph 3 below, is extended to and including June 7, 2007.
3. The date by which the Debtors must assume or reject the lease between Orix Warren, LLC ("Orix") and Delphi Automotive Systems, LLC of non-residential real property located at 4551 Research Parkway, Warren, Ohio (the "Orix Lease") is hereby extended to and including December 7, 2006 (the "Initial Extension"). The Initial Extension shall be further extended for an additional six months to June 7, 2007, without further notice or a hearing (the "Additional Extension"), unless Orix files and serves a notice of objection to the Additional Extension on or prior to October 1, 2006, in which case a hearing with respect to the Orix Lease and the granting of the Additional Extension shall be held at the next omnibus hearing to occur at least 30 days following the October 1, 2006 deadline. In the event of such a hearing, the Debtors shall bear the burden of proof regarding "cause" for such extension, as such term is contemplated under 11 U.S.C. § 365(d)(4) and the Debtors shall file their related pleading at least 10 calendar days prior to the applicable omnibus hearing. Notwithstanding the aforementioned, all filings, service and deadlines related thereto shall be determined pursuant to the Order Under 11 U.S.C. §§ 102(1) and 105 and Fed.R.Bankr.P. 2002(m), 9006, 9007, and 9014 Establishing (I) Omnibus Hearing Dates, (II) Certain Notice, Case Management, and Administrative Procedures, and (III) Scheduling an Initial Case Conference in Accordance with Local Bankr.R. 1007-2(e) ("Case

Management Order") (Docket No. 245). To the extent such hearing occurs after the expiration of the Initial Extension, the deadline to assume or reject the Orix Lease shall be automatically extended until the later of (a) the date set forth in any subsequent order or (b) ten business days after the Court rules on Orix's objection.

4. The entry of this Order shall be without prejudice to (a) the Debtors' right to seek from this Court further extensions of the assumption and rejection deadline with respect to any or all of their Real Property Leases and (b) the right of any party to any Real Property Lease to seek from this Court a shortening of the deadline with respect to any or all of its Real Property Leases for cause shown.

5. Notwithstanding anything contained in this Order, provided that the Debtors file a subsequent motion to extend the section 365(d)(4) deadline in time to be heard prior to the expiration of the applicable section 365(d)(4) deadline for a particular lease, the deadline to assume or reject such lease shall be automatically extended until the later of (a) the date set forth in any subsequent order or (b) three business days after the Court rules on such motion.

6. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

7. The requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York for the service and filing of a separate memorandum of law is deemed satisfied by the Motion.

Dated: New York, New York
November 29, 2005

/s/Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

1 1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 05-44481

5 In the Matter of:

6 DELPHI CORPORATION,

7 Debtor.

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10 U.S. Bankruptcy Court

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12 One Bowling Green

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14 New York, New York

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16 April 7, 2006

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18 10:16 a.m.

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20 B E F O R E:

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22 HON. ROBERT D. DRAIN

23
24 U.S. BANKRUPTCY JUDGE

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1 DELPHI CORPORATION

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2 hurt lies otherwise.

3 THE COURT: Okay. All right. I
4 have in front of me a motion by one of
5 Delphi Automotive Systems, LLC's
6 landlords, Cherokee North Kansas City,
7 LLC, to shorten the time under Section
8 365 of the Bankruptcy Code for the debtor
9 to determine whether to assume or reject
10 its lease.

11 As the Second Circuit laid out in
12 *In re Burger Boys, Inc.*, 94 F.3d 755,
13 761 (2d Cir. 1996), in
14 connection with requests to determine
15 "cause" under Section 365, although there,
16 as an aside, the Court was determining
17 cause for an extension as opposed to
18 cause for termination of the time to
19 assume or reject,
20 the Second Circuit set forth
21 various factors that the bankruptcy court
22 should consider when determining whether
23 cause exists or not, although cautioning
24 that those factors should not be applied
25 in a mechanical or formulaic manner.

1 DELPHI CORPORATION

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2 Cherokee has the burden here to show cause
3 to require a shortening of the time to assume or
4 reject the lease because that is what my order,
5 previously extending the assume or reject period,
6 Provided. That order was dated November 29, 2005.

7 Now, I don't agree with the debtor
8 that Cherokee is estopped from seeking to
9 shorten the assume or reject period
10 provided in that order, because the order
11 did recognize the right of a landlord to
12 come in and seek a shorter period for
13 cause. But obviously, under the order,
14 Cherokee does have the burden.

15 In going through the factors made
16 out by Burger Boys and subsequent cases,
17 I conclude that it has not carried that
18 burden. The first factor is whether the
19 debtor is paying for its use of the
20 property. And it is undisputed that the
21 debtor is paying for use here.

22 I should note that Burger Boys
23 reversed the lower courts for directing
24 the end of the assume-or-reject period
25 simply because the debtor was not paying

1 DELPHI CORPORATION

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2 and said, that even if the debtor was not
3 paying, there might be other reasons to
4 continue the assume-or-reject period.

5 But here, of course, the debtor is
6 paying and that's a strong factor for
7 continuing the debtor's ability to decide
8 whether to assume or reject to a later
9 date.

10 Secondly, I need to inquire whether
11 the debtor's continued occupation of the
12 premises damages the landlord beyond
13 compensation available under the
14 Bankruptcy Code. As far as this record
15 provides, I believe that to the extent
16 there is any damage whatsoever that would
17 not be compensable under Section 502 of
18 the Bankruptcy Code or alternatively, if
19 for some reason the debtor stop paying
20 under section 507, it is negligible.

21 The debtor has pointed out that the
22 landlord did, in fact, successfully
23 refinance its loan, which it knew it
24 would have to do in the fall of 2005,
25 since the loan expired at the end of that

1 DELPHI CORPORATION

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2 year and that the finance charge was a
3 charge that would have been incurred in
4 any event and that the interest rate did
5 not change.

6 The only added burden on the
7 landlord, in connection with that
8 refinancing, was the requirement to put
9 up an additional amount of cash that
10 eventually will aggregate 200 thousand
11 dollars, which is being held at interest
12 as security for breach of the lease.
13 Because it's being held as interest, the
14 only real damage there, is the
15 difference between that interest rate and
16 the amount that Cherokee could earn over
17 and above that interest rate, separately.

18 Cherokee says it's also damaged
19 because it's not able to sell the
20 property, given the debtor's bankruptcy
21 case and the uncertainty over the lease.
22 I believe, however, this factor was not
23 contemplated when the Second Circuit laid
24 out the consideration of whether the
25 lessor would be damaged beyond the

1 DELPHI CORPORATION

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2 compensation available under the Bankruptcy Code.

3 The relationship between Cherokee
4 and the debtor is a landlord tenant
5 relationship. In that relationship, the
6 debtor is not obligated to enhance the
7 landlord's ability to sell the property
8 and it's clearly recognized that merely
9 the fact of a debtor being a debtor under
10 the Bankruptcy Code is not a reason to
11 terminate a lease or to compel assumption
12 or rejection of it simply because that fact
13 would somehow make it harder for a landlord to
14 sell its property. If that were the case, debtors'
15 time to assume or reject the lease would almost as a
16 matter of course be terminated.

17 Moreover, as the landlord points out, given
18 Delphi's current statement that it intends to sell
19 its cockpit manufacturing line, and consequently
20 that the likelihood that eventually the line will
21 be sold and consequently the facility in
22 Kansas City will go along with that sale,
23 Cherokee's ability to sell the premises
24 premises should significantly improve,
25 provides better clarification for

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2 prospective buyers.

3 In addition, Exhibit 10 suggests
4 that, ultimately, such a sale is
5 achievable for a price to the landlord that is not
6 materially worse than what it could be
7 sold at today, after you back out the
8 amount of rent that the debtor will be
9 paying until its decision to assume or
10 reject.

11 The lease is not the debtor's
12 primary asset, but it's a significant
13 facility and it is a piece in the very
14 complicated puzzle that the debtor is
15 still putting together, with the help of
16 its various constituencies including the
17 creditors' committee, and I believe that
18 it has not had sufficient time to
19 formulate a plan, given the complexity of
20 that puzzle.

21 So, in evaluating those last two
22 factors laid out by Burger Boys, it again
23 appears to me that those factors also
24 argue for not shortening the time to
25 assume or reject.

VERITEXT

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2 I should note, finally, that the
3 Second Circuit cautioned in the Klein
4 Sleep, 78 F.3d 18, 29 (2d Cir. 1996), that
5 assumption of a lease should be avoided,
6 if possible, given the fact that if the lease
7 is subsequently breached because a debtor
8 changes its business plan or its
9 forecasted revenues, upon which the
10 business plan was based proved to be less
11 than the forecast, the claim is an
12 administrative claim, a hundred cent
13 dollar claim as opposed to a lease
14 rejection claim. Consequently, given the
15 uncertainty as to the ultimate sale and
16 the terms of the ultimate sale, including
17 the terms by which the lease might be
18 assumed, all of which will not become
19 completely clear, it appears on this
20 record, until the last quarter of 2007,
21 at my best estimate, it would appear to
22 me to be premature to force the debtor to
23 get into a negotiation regarding
24 assumption or rejection with the landlord
25 at this time.

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2 The prospect of a sale, I'd agree,
3 is quite strong. But that should be
4 additional protection for the landlord,
5 since that should lead, ultimately, to
6 assumption of the lease and, if not full
7 payment, because the lease may be
8 renegotiated to some extent, at least a
9 much better result than rejection.

10 But given the uncertainties here
11 and the fact that the debtor's paying
12 currently, the debtor should not be
13 forced to get into those negotiation and
14 decision making process at this time.

15 So, Mr. Butler, you can submit an
16 order denying the motion for the reasons
17 stated.

18 MR. BUTLER: Thank you, Your Honor.
19 Your Honor, the next matter on the agenda
20 is matter number 10. It's the O'Neil
21 lift stay motion. And this was filed by
22 Mary O'Neil and Liam O'Neil at docket
23 number 2748. We filed a response at
24 docket number 3051. I understand there
25 was a reply filed last evening and this

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2 **C E R T I F I C A T I O N**

3 I, Esther Accardi, hereby certify that
4 the foregoing is a true and correct
5 transcription, except where, as indicated, the
6 Court has modified its bench ruling, to the best
7 of my ability of the sound recorded proceedings
8 submitted for transcription in the matter of:
9 Delphi Corporation.

10

11 I further certify that I am not employed
12 by nor related to any party to this action.

13

14 In witness whereof, I hereby sign this
15 date:

16 April 11, 2006

17

18

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Esther Accardi

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
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DELPHI CORPORATION, et al. : Case No. 05-44481 (RDD)
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Debtors. : (Jointly Administered)
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DECLARATION OF JOHN D. SHEEHAN IN SUPPORT OF THE DEBTORS' REPLY TO
OBJECTION OF ORIX WARREN, LLC TO MOTION FOR ORDER UNDER 11 U.S.C. §
365(d)(4) EXTENDING DEADLINE TO ASSUME OR REJECT UNEXPIRED LEASE OF
NONRESIDENTIAL REAL PROPERTY

John D. Sheehan declares as follows:

1. Delphi Corporation and certain of its subsidiaries and affiliates (the "Affiliate Debtors") are debtors and debtors-in-possession in these chapter 11 cases (collectively, the "Debtors").¹ I submit this declaration in support of the Debtors' Reply To The Objection Of Orix Warren, LLC To Motion For Order Under 11 U.S.C. § 365(d)(4) Extending Deadline To Assume Or Reject Unexpired Lease Of Nonresidential Real Property (the "Reply"). Capitalized terms not otherwise defined in this declaration have the meanings ascribed to them in the Reply.

2. I am the Vice President and Chief Restructuring Officer for Delphi Corporation (which, with certain of its subsidiaries and affiliates, the debtors and debtors-in-possession in the above-captioned cases, are referred to collectively and variously herein as "Delphi" or the "Debtors"). I joined Delphi in July 2002 as Chief Accounting Officer and Controller. On March 4, 2005, I also assumed the position of acting Chief Financial Officer, a position that I held until October 8, 2005, when I was appointed Chief Restructuring Officer. Consequently, I am familiar with, and personally was involved in, the events and circumstances giving rise to the Debtors' decision to seek chapter 11 protection on October 8, 2005 (the "Initial Filing Date"). Since the Initial Filing Date, I have been involved at some level in virtually all of the significant decisions made by the Debtors in connection with these chapter 11 cases.

3. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, my opinion, my experience with and knowledge of Delphi's financial condition, or are based upon knowledge obtained

¹ Delphi Automotive Systems LLC is the tenant and the obligor under the lease subject to the Reply. The term "Debtors" is used pervasively in the Reply and herein because this Declaration represents the position of the Debtors. Obligations and liabilities inherent in such references, however, are attributable only to Delphi Automotive Systems LLC.

from Delphi employees reporting to me in the course of their duties. If I were called upon to testify, I could and would testify to the facts set forth herein.

DAS LLC Is Continuing To Pay For The Use Of The Property

4. DAS LLC is current in all of its postpetition obligations under the Orix Lease. Moreover, DAS LLC has significant resources and liquidity, including access to the Debtors' substantial debtor-in-possession credit facility, which provide adequate assurance to Orix Warren that it will continue to receive its postpetition rent timely.

The Lease Is Important To The Debtors' Estates And The Debtors Have Not Had Sufficient Time To Make Critical Decisions Regarding Its Leases

5. The Debtors' research and technical centers, manufacturing sites, and sales offices are all vital to the Debtors' business operations. As part of the Debtors' restructuring efforts, the Debtors are in the process of evaluating all owned and leased real estate, including the Orix Lease. In considering their options with respect to the real property leases, the Debtors are evaluating a variety of factors to determine whether it is appropriate to assume, assume and assign, or reject each particular real property lease.

6. The Debtors have announced their transformation plan, which outlines the realignment of their global product portfolio and manufacturing footprint to preserve the Debtors' core businesses. Implementation of that transformation plan, however, will take time as the Debtors continue to evaluate the allocation of their resources, which include their real estate holdings. Moreover, the completion of their negotiations with their major stakeholders is integral to the Debtors' decision-making. Indeed, the results of the Debtors' framework discussions and their ongoing business planning are likely to have an impact on their analysis. Based on these factors, it is my judgment that forcing a premature decision to assume or reject the Orix Lease would harm the Debtors, their estates, and all other stakeholders because it could force

DAS LLC to assume excess administrative liabilities under the Orix Lease or forfeit value on account of a marketable or otherwise necessary lease.

The Debtors Have Not Had Sufficient Time To Formulate A Plan Of Reorganization

7. At this point in the Debtors' chapter 11 cases, the Debtors' energies are focused on negotiating with key constituencies to formulate a plan of reorganization which will allow for the continued implementation of the Debtors' transformation plan. These discussions are likely to influence the Debtors' decisions regarding the assumption or rejection of their leases. In my view, the Debtors need to focus on implementing the transformation plan, not making one-off decisions about leases or facilities.

8. The Orix Lease, by its terms, expires December 31, 2008 and requires DAS LLC to pay approximately \$158,000 in monthly obligations. Forcing DAS LLC to assume or reject the Orix Lease when the Debtors have not yet determined their plans with respect to that lease could trigger additional administrative claims that would otherwise be a general unsecured claim limited by section 502(b)(6) of the Bankruptcy Code in the event of a rejection of that lease.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing statements are true and correct.

Executed on November 17, 2006, in Troy, Michigan.

/s/ John D. Sheehan
JOHN D. SHEEHAN